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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,509	08/17/2001	David C. Hargrove	10016772-1	6315

7590

06/16/2005

HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER
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NAHAR, QAMRUN

ART UNIT	PAPER NUMBER
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2191

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/932,509	<b>Applicant(s)</b> HARGROVE ET AL.	
	<b>Examiner</b> Qamrun Nahar	<b>Art Unit</b> 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2 and 4-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*Handwritten signature/initials*

**DETAILED ACTION**

1. This action is in response to the amendment filed on 3/10/05.
2. The objections to the claims are withdrawn in view of applicant's amendment.
3. The rejection under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention to claim 7 is withdrawn in view of applicant's amendment.
4. The rejection under 35 U.S.C. 102(e) as being anticipated by Forbes (U.S. 6,381,742) to claims 1 and 6-7 is moot in view of applicant's amendment.
5. Claims 1-2, 4-15, 17-19 and 21-22 have been amended.
6. Claim 3 has been canceled.
7. Claims 1-2 and 4-22 are pending.
8. Claims 8-12 and 14-15 stand finally rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
9. Claims 1-2 and 4-22 stand finally rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes (U.S. 6,381,742) in view of Davis (U.S. 5,742,829).

***Response to Amendment***

***Claim Rejections - 35 USC § 101***

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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11. Claims 8-12 and 14-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 8, merely claimed as a program representing a computer listing *per se* (software distribution medium), that is, descriptions or expressions of such a program and that is, descriptive material *per se*, non-functional descriptive material, and is not statutory because it is not a physical “thing” nor a statutory process, *as there are not “acts” being performed*. Such claimed programs do not define any structural and functional interrelationships between the program and other claimed aspects of the invention which permit the program’s functionality to be realized. Since a computer program is merely a set of instructions capable of being executed by a computer, the program itself is not a process, without the computer-readable medium needed to realize the program’s functionality. In contrast, a claimed computer-readable medium encoded with a program defines structural and functional interrelationships between the program and the medium which permit the program’s functionality to be realized, and is thus statutory. *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760. *In re Sarkar*, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978). See MPEP § 2106(IV)(B)(1)(a).

It is suggested that claim 8 be amended to recite the claimed software distribution medium as “A software distribution medium **embodied with computer executable instructions, wherein the computer executable instructions are executed to**”.

As per claims 9-12 and 14-15, these claims are rejected for failing to cure the deficiencies of the above rejected non-statutory claim 8.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-2 and 4-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes (U.S. 6,381,742) in view of Davis (U.S. 5,742,829).

**Per Claim 1 (Amended):**

Forbes teaches a method of installing software on a computer (“A software package manager uses a distribution unit containing components for a software package and a manifest file that describes the distribution unit to manage the installation, execution, and uninstallation of software packages on a computer.” in column 2, lines 38-42); contacting a software distribution medium, the software distribution medium comprising multiple software versions for installation on a computer; automatically locating an INF file; and installing a correct software version on the computer based on information within the INF file (“For installation, the package manager acquires the manifest file and parses it to learn if the software package depends on any additional components. The package manager resolves any dependencies by acquiring a distribution unit containing the needed component and installs the dependency’s distribution unit as described below. Because dependencies can be nested within dependencies, the package manager recursively processes all the dependencies before finishing the installation of the software package that depends upon the additional components. ... The manifest file and distribution unit

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can be stored on all types of media from traditional magnetic and optical disks to networked servers.” in column 2, lines 42-52 and column 3, lines 15-17). Forbes does not explicitly teach wherein the INF file is located in a root directory of the software distribution medium and the correct software version is located in a subdirectory of the software distribution medium. Davis teaches wherein the INF file is located in a root directory of the software distribution medium and the correct software version is located in a subdirectory of the software distribution medium (“As can be seen from Table 3, the main directory site.srv has three directories \x86, \mips, and \alpha. Each directory contain software that is specific to a particular type of processor and within each directory are editions of the software for a particular operating system, such as ‘servos2.exe’ for use with ‘OS/2’ and ‘servnt.exe’ for use with ‘MICROSOFT WINDOWS NT’. Each directory then, in turn, has a subdirectory 00000409 and a subdirectory 00000407. Each of these numbers indicates a specific language code that refers to a natural language. For example, the number 00000407 indicates the German language and the number 00000409 indicates the English language. These subdirectories contain one or more portions of the edition of the software that are language dependent. Therefore, within the \x86 directory, servos2.exe, servnt.exe and serv.dll are language independent portions of the software that are suitable for execution on the X86 family of processors, with servos2.exe suitable for use with ‘OS/2’ and servnt.exe suitable for use with ‘MICROSOFT WINDOWS NT.’ Further, subdirectories 00000409 and 00000407 of the \x86 directory contain the language dependent portions of the software that are suitable for execution on the X86 family of processors. Although the software for one service has been depicted, all of the other software this is available from the site server

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(including programs that are to be installed on clients) is stored in this manner.” in column 7, line 56 to column 8, line 15; column 6, line 66 to column 8, line 21; and Table 3).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Forbes to include wherein the INF file is located in a root directory of the software distribution medium and the correct software version is located in a subdirectory of the software distribution medium using the teaching of Davis. The modification would be obvious because one of ordinary skill in the art would be motivated to accommodate different natural languages in a heterogeneous computer environment (Davis, column 1, lines 59-65).

**Per Claim 2 (Amended):**

The rejection of claim 1 is incorporated, and further, Forbes does not explicitly teach accessing within the INF file, a source section and a strings section that correspond to a country code and a version of an operating system present on the computer; replacing path variables in the source section with path values from the strings section; and locating the correct software version based on the path values. Davis teaches accessing within the INF file, a source section and a strings section that correspond to a country code and a version of an operating system present on the computer; replacing path variables in the source section with path values from the strings section; and locating the correct software version based on the path values (column 6, line 66 to column 8, line 21; and Table 3).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Forbes to include accessing within

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the INF file, a source section and a strings section that correspond to a country code and a version of an operating system present on the computer; replacing path variables in the source section with path values from the strings section; and locating the correct software version based on the path values using the teaching of Davis. The modification would be obvious because one of ordinary skill in the art would be motivated to accommodate different natural languages in a heterogeneous computer environment (Davis, column 1, lines 59-65).

**Per Claim 4 (Amended):**

The rejection of claim 2 is incorporated, and Davis further teaches wherein the correct software version corresponds to the country code and the version of the operating system present on the computer (column 7, lines 57-67 to column 8, lines 1-21).

**Per Claim 5 (Amended):**

The rejection of claim 3 is incorporated, and the combination of Forbes and Davis further teaches manually locating a secondary INF file within the subdirectory; and installing the correct software version on the computer based on information within the secondary INF file (Forbes, column 2, lines 42-52; and Davis, column 6, line 66 to column 8, line 21; and Table 3).

**Per Claim 6 (Amended):**

The rejection of claim 1 is incorporated, and Forbes further teaches wherein the software distribution medium is embodied as a computer storage medium selected from a group of



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computer storage media comprising: a flash memory; a hard disk; read only memory (ROM); a removable floppy disk; and a removable optical disk (column 3, lines 15-17).

**Per Claim 7 (Amended):**

The rejection of claim 1 is incorporated, and Forbes further teaches wherein the software distribution medium is a computer storage medium associated with a remote server coupled to the computer via a network (column 3, lines 15-17).

**Per Claim 8 (Amended):**

This is a software distribution medium version of the claimed method discussed above (claims 1, 3 and 5), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 9 (Amended):**

This is a software distribution medium version of the claimed method discussed above (claims 3 and 5), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 10 (Amended):**

This is a software distribution medium version of the claimed method discussed above, claim 5, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 11 (Amended):**

This is a software distribution medium version of the claimed method discussed above, claim 4, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 12 (Amended):**

This is a software distribution medium version of the claimed method discussed above (claims 3 and 5), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 13 (Amended):**

This is a software distribution medium version of the claimed method discussed above, claim 2, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 14 (Amended):**

This is a software distribution medium version of the claimed method discussed above, claim 6, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 15 (Amended):**

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This is a software distribution medium version of the claimed method discussed above, claim 7, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claims 16 & 17 (Amended):**

These are computer versions of the claimed software distribution medium discussed above, claim 8, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

**Per Claim 18 (Amended):**

This is a computer version of the claimed software distribution medium discussed above, claim 11, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

**Per Claim 19 (Amended):**

This is a computer version of the claimed software distribution medium discussed above, claim 14, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

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**Per Claims 20 & 21 (Amended):**

These are system versions of the claimed software distribution medium discussed above (claims 8-10 and 12), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

**Per Claim 22 (Amended):**

This is a system version of the claimed software distribution medium discussed above, claim 11, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

***Response to Arguments***

14. Applicant's arguments filed on 3/10/05 have been fully considered but they are not persuasive.

*In the remarks, the applicant argues that:*

a) Amended Claim 1 and Claims 8, 16 and 20 each recite limitations relate to an information (INF) file architecture or directory structure that facilitates software installation. The Examiner asserts that the Davis patent (5742829) teaches these limitations at column 6, line 66 through column 8, line 21, including Table 3. The Examiner does not say which features in Davis correspond to the specific elements recited in each of the claims. Rather, he states only that "Davis teaches wherein the INF file is located in a root directory of the software installation medium and the correct software version is located in a subdirectory of the software distribution

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medium." Office Action, page 8. A close comparison between the teachings of Davis and the specific claim limitations shows that the Examiner's general assertion is not correct.

Claim 1 recites automatically locating an INF file located in a root directory of the software distribution medium and installing a correct software version located in a subdirectory on the software distribution medium. Claim 8 recites a root INF file configured to control a software installation of any one of the multiple software versions and secondary INF files, each configured to control a software installation of a particular software version. Claim 16 recites a double INF file architecture configured to direct the processing unit to automatically install a correct software version. Claim 20 recites a root INF file located in a root directory and secondary INF files each located in a particular subdirectory.

Davis teaches a map file 324 and a software directory structure 326. The map file 324 lists the software stored on the server 202 and indicates the specific edition of that software, including the language and operating system. Davis, column 6, line 66 - column 7, line 6. The software directory structure 326 includes a "main directory 'site.srv' with various directories of the main directory ...." Language independent portions of each software are contained in these "various directories" and language dependent portions of each software are contained in subdirectories within these directories. This directory structure is shown in Davis' Table 3. Davis, column 7, lines 15-31.

Davis doesn't teach anything about an INF file for installing software. More specifically, Davis does not teach a root INF file and secondary INF files, a double INF file architecture, or an INF file located in a root directory and installing software located in a subdirectory based on information in the INF file. Indeed, the directory structure in Davis Table 3 has no particular

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relevance to how the correct version of the software is selected for installation. Moreover, there is no teaching or suggestion in Davis that the map file 324 functions as some type of INF file.

The software selection process described in Davis at columns 9-12, although difficult to follow, does not seem to even contemplate an INF file architecture or directory structure such as that recited in Claims 1, 8, 16 and 20. If the Examiner disagrees, he is respectfully requested to specifically point out and explain those features in Davis that correspond to the elements recited in the claims. Absent such a showing, the Examiner cannot properly establish a prima facie case of obviousness as to amended Claim 1 and Claims 8, 16 and 20.

Claims 2, 4-7, 9-15, 17-19 and 21-22 distinguish patentably over the cited references due to their dependence on Claims 1, 8, 16 and 20.

*Examiner's response:*

a) Examiner strongly disagrees with applicant's assertion that Davis fails to disclose the claimed limitations recited in claims 1, 8, 16 and 20. Davis clearly shows each and every limitation in claims 1, 8, 16 and 20.

As previously pointed out in the last Office Action (Mailed on 07/15/2004, par. 14), Davis teaches wherein the INF file is located in a root directory of the software distribution medium and the correct software version is located in a subdirectory of the software distribution medium ("As can be seen from Table 3, the main directory site.srv has three directories \x86, \mips, and \alpha. Each directory contain software that is specific to a particular type of processor and within each directory are editions of the software for a particular operating system, such as 'servos2.exe' for use with 'OS/2' and 'servnt.exe' for use with 'MICROSOFT

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WINDOWS NT'. Each directory then, in turn, has a subdirectory 00000409 and a subdirectory 00000407. Each of these numbers indicates a specific language code that refers to a natural language. For example, the number 00000407 indicates the German language and the number 00000409 indicates the English language. These subdirectories contain one or more portions of the edition of the software that are language dependent. Therefore, within the \x86 directory, servos2.exe, servnt.exe and serv.dll are language independent portions of the software that are suitable for execution on the X86 family of processors, with servos2.exe suitable for use with 'OS/2' and servnt.exe suitable for use with 'MICROSOFT WINDOWS NT.' Further, subdirectories 00000409 and 00000407 of the \x86 directory contain the language dependent portions of the software that are suitable for execution on the X86 family of processors. Although the software for one service has been depicted, all of the other software this is available from the site server (including programs that are to be installed on clients) is stored in this manner." in column 7, line 56 to column 8, line 15; column 6, line 66 to column 8, line 21; and Table 3).

In addition, see the rejection above in paragraph 13 for rejection to claims 1-2 and 4-22.

### *Conclusion*

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (571) 272-3730. The examiner can normally be reached on Mondays through Fridays from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam, can be reached on (571) 272-3695. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is 571-272-2100.

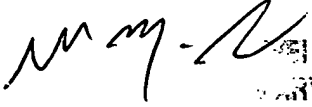
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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QN  
June 9, 2005

  
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PRIMARY EXAMINER